

STATE OF MICHIGAN
COURT OF APPEALS

JOSEPH S. GANTZ,

Plaintiff-Appellant,

v

FRANCES GANTZ,

Defendant-Appellee.

UNPUBLISHED

April 29, 1997

No. 190283

Oakland Circuit Court

LC No. 89-370775-DO

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Plaintiff appeals the trial court's order which reduced his alimony obligation by \$200 per month. We reverse and remand for further findings of fact.

This case stems from the November 21, 1990, divorce whereby defendant was entitled to receive monthly alimony payments of \$2,000 until her remarriage or death of plaintiff. At the time of divorce, plaintiff was 60 years old, and defendant was 56. At all times relevant to this litigation, plaintiff has maintained a dental practice which is the primary source of his income. Plaintiff sought a reduction in alimony payments payable to defendant due to his health problems as well as the declining income received from his dental practice.

Pursuant to an order from the trial court, an evidentiary hearing was held in front of a Friend of the Court referee. At the hearing, plaintiff presented testimony regarding his failing health as well as the financial troubles of his dental practice. Defendant did not present testimony to refute plaintiff's claims. Consequently, the referee recommended reduction of plaintiff's alimony from \$2,000 to \$1,000 per month. Defendant filed a timely objection and sought a judicial hearing before the trial court.

Refuting plaintiff's claims of financial hardship, defendant produced the testimony of her own expert certified public accountant who opined that plaintiff's alleged financial situation was not as dire as previously represented. This opinion was based upon the fact that plaintiff had disposed of his main income producing asset through a non arms-length transaction with a woman with whom plaintiff was

residing, and that he was effectively hiding his income through “shareholder loans” which he received from his professional corporation.

The matter was then presented before the trial court which reviewed the transcript of the referee hearing and the deposition transcripts of plaintiff’s doctor and defendant’s accountant. The court held that plaintiff had not provided sufficient documentation regarding his true financial situation. However, the trial court determined that based upon the evidence provided, plaintiff was entitled to a reduction in alimony from \$2,000 to \$1,800 per month.

Plaintiff first contends that the trial court’s findings of fact were inadequate, and therefore, this Court should adopt the findings of the Friend of the Court referee. We agree that the trial court’s findings were inadequate, but remand the matter to the trial court for more specific findings of fact.

In *Flager v Flager*, 190 Mich App 35; 475 NW2d 411 (1991), this Court held:

It is incumbent on the trial judge to make factual findings upon which to base a determination whether there has been a change in circumstances. If a change has taken place, he must then make factual findings from which to conclude whether the alimony should be modified and, if so, by what amount. [*Id.*, 37.]

In the order modifying alimony, the trial court found that there was a sufficient change in circumstance to merit a \$200 per month reduction. However, no findings were made to support such a determination. Rather, the trial court merely held that, “based on the evidence Plaintiff did provide, the Court finds that he is entitled to a modification in alimony from \$2,000 a month to \$1,800 a month.” No findings were made as to plaintiff’s actual financial situation, or his reduced ability to work due to his failing health. Consequently, we believe that this matter should be remanded in order for the trial court to make findings sufficient to support its determination as to modification of alimony.

Plaintiff also argues because this is an equity matter and the trial court made its ruling based upon the same record testimony that is before this Court, we should enter our own order granting plaintiff an abatement or substantial reduction in alimony. We disagree.

The main object of alimony is to balance the incomes and needs of the parties in a way that would not impoverish either party. *Ackerman v Ackerman*, 197 Mich App 300, 302; 495 NW2d 173 (1992). Modification of an award of alimony is authorized by MCL 552.28; MSA 25.106, which states:

On petition of either party, after a judgment for alimony or other allowance for either party or a child, or after a judgment for the appointment of trustees to receive and hold property for the use of either party or a child, and subject to section 17, the court may revise and alter the judgment, respecting the amount or payment of the alimony or allowance, and also respecting the appropriation and payment of the principal and

income of the property held in trust, and may make any judgment respecting any of the matters that the court might have made in the original action. [*Id.*]

The modification of an alimony award must be based on new facts or changed circumstances arising after the judgment of divorce. *Ackerman, supra* at 301. An evidentiary hearing is required in order for the trial court to make an informed and meaningful determination of the amount of modification arising out of the change in circumstances. *Kiefer v Kiefer*, 212 Mich App 176, 180; 536 NW2d 873 (1995). Additionally, the party moving for modification has the burden of showing such new facts or changed circumstances. *Ackerman, supra* at 301.

Reduction of income and failing health both constitute sufficient grounds for a reduction of alimony. See *Pohl v Pohl*, 13 Mich App 662, 665; 164 NW2d 768 (1968); *Yanz v Yanz*, 116 Mich App 574, 576; 323 NW2d 489 (1982). However, determination of the proper reduction is highly subjective and requires a fact-intensive analysis. Consequently, in furtherance of judicial economy we believe the proper course of action is to remand this matter to the trial court for a determination of the appropriate modification based upon sufficient findings of fact.

Reversed and remanded. We do not retain jurisdiction.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh